Supreme Court, U.S.
FILED
05-522 OCT 17 2005
OFFICE OF THE CLERK

No._____

In The Supreme Court of the United States

IN RE: ELLEND DUNN

Petitioner

v.

FRANCIS J. HARVEY

Respondent

On Petition For Writ of Mandamus
To the United States Federal Court
For The Federal Circuit

PETITION FOR WRIT OF MANDAMUS

ELLEN O. DUNN
Pro Se Petitioner
1323 WEBSTER STREET, N.E.
WASHINGTON, DC20017
202-526-6816

QUESTIONS PRESENTED IN THIS PETITION FOR A WRIT OF MANDAMUS

(1) Whether the United States Court of Appeals, Federal Circuit, erred when it would not provide a signed opinion in response to two formal requests by the plaintiff so that the petition could be procedurally reviewed by the Supreme Court.

(2) Whether the United State Court of Appeals, Federal Circuit is interfering with the Supreme Court's appellate jurisdiction in refusing to have the judge sign the opinion as specified in guidance.

(3) Whether the Supreme Court should allow the United States Court of Appeals, Federal Circuit, to establish itself as the final appellate review authority, when it refuses to comply with requests for signed orders for Supreme Court review, in employment cases by African-Americans in violation of their 5th amendment constitutional rights to due process.

(4) Whether the Federal Appeals Court Federal Circuit and the subordinate Merit Systems Protection Board (MSPB) can authorize global jurisdiction on settlement matters with other Federal Circuits and their subordinate courts without a waiver or transfer of rights filed with the MSPB and courts by the plaintiff or her attorney.

(5) Whether the Federal Appeals Court Federal Circuit and the subordinate MSPB can endorse as a jurisdictional or non-jurisdictional matter a settlement agreement that authorizes use of federal taxpayer dollars to pay for punitive conduct in sexual harassment, hostile work environment, and employment discrimination.

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

All parties to the case are contained on the front cover of the petition.

According to Supreme Court Rule 29(6) a plaintiff who was a government employee is not required to file a corporate disclosure statement. The plaintiff in this case contends that he was a government employee employed by a federal agency.

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STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

(1) The Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 2072 in that the Court shall have the power to prescribe general rules of practice and procedure for cases in the United States district courts and court of appeals.

(2) The Court has jurisdiction of this appeal according to Article III, Section 1, Section 2(1), 2(2) and Amendment 5 of the United States Constitution.

The primary question before the Court is whether the United States Court of Appeals for the Federal Circuit should be required to render a signed judgment order/opinion issued August 31, 2005 by Chief Judge Michel (App. 1-a) when formally requested by the plaintiff in order to appeal to the Supreme Court and whether the refusal represents a violation of my 5th amendment rights and a violation of the Supreme Court's right to final appeal. The Supreme Court issued guidance on unsigned opinions for 2003 and 2004 in Pet. App. 3-a and Pet. App. 4-a respectively. The plaintiff delivered a letter requesting a copy of a signed judgment dated September 1, 2005 as Pet. App. 5-a. to the appellate court. On September 6, 2005 the United States Court of Appeals for the Federal Circuit sent a letter (Pet. App. 7-a) in which it states "There is no authority requiring a judge's signature to appear on an opinion. Your case was decided per curiam by a panel of judges on its merits. Therefore, your submissions are being returned without action." However, a review of the official court records on Pet. App. 8-a under Public Access Court Electronic Records (PACER) did not acknowledge that my letter was filed with the court requesting a copy of the signed opinion or a response was issued by the court.

Therefore a motion (Pet. App. 9-a) was filed dated September 8, 2005 requesting the correction of the court record to acknowledge receipt of my letter requesting the ruling denial be signed the response, while also confirming that the Federal Appeals Court Federal circuit was denying me a signed opinion/judgment so that I could exercise my 5th amendment rights to appeal to the Supreme Court. I filed the motion by faxing through a commercial carrier and postal service to ensure that there was a proper independent record of receipt. The record was corrected and the motion acknowledged in the official court record. However, the Federal Appeals Court Federal Circuit has been steadfast in refusing to provide a signed copy of their ruling, has refused to acknowledge the Supreme Court's authority to request a signed judgment for appellate review, or my right under the 5th amendment due process clause of the U. S. Constitution to an appeal to the Supreme Court. I am an African-American whose rights under the U.S. Constitution were encoded in Title VII to the Civil Rights Act of 1964, which stipulates that I have the right to equal employment opportunity and to litigate discrimination which violates those rights based on race. This ruling is part of that process.

Title 28 of The United States Code § 1254 provides

> "Cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. "

This gives me the authority to file with the Supreme Court. Appellate jurisdiction has been conferred upon the Supreme

Court by various statutes, under authority given Congress by the Constitution. The basic statute controlling the jurisdiction of the Supreme Court in this matter is found in Title 28 of the United States Code §1251. The Supreme Court issued guidance in Pet. App. 3-a and Pet. App. 4-a,, that advised the subordinate courts of the preponderance of opinions that are being returned without comment because they are unsigned. The plaintiff believes that the rulemaking power conferred on the Supreme Court by Congress in Title 28 United States Code § 2071 and 2072 gave it authority to direct appeals court to sign unpublished opinions, to enable parties to appeal rulings to the Supreme Court. The plaintiff has been denied that right by the appeals court.

The unsigned order also raises issues of global jurisdiction, which should be addressed by the Supreme Court. It is clear from the MSPB complaint issues (Pet. App. 12-a), PACER federal court docket (Pet. App. 24-a), and MSPB Volume 3 Docket (Pet. App. 43-a) that parties were both the MSPB and federal Court were processing MSPB issues at the same time, that were jurisdictionally separate and are prohibited under Title 28 USC §1331 and §4324. Neither the plaintiff nor the plantiff's attorneys entered any documentation in the MSPB or federal court record waiving the plaintiffs' rights. The appellate court in this case is trying to establish itself as the final level of appellate review for issues under which only the Supreme Court has jurisdiction. Since there is no global jurisdictional authority, the MSPB had no authority to dismiss her complaint based on a settlement.

The plaintiff is relying on a writ of mandamus for these reasons:

(1) The plaintiff's petition requests that the Court exercise its supervisory power on whether the United States Court of Appeals for the Federal Circuit has an obligation to complete the judicial process and render a signed judgment

order/opinion from the United States Court of Appeals for the Federal Circuit to the plaintiff. The plaintiff requested a signed judgment order/opinion from the United States Court of Appeals for the Federal Circuit on two occasions. The response received from the Appeals Court refusing to provide a signed order for Supreme Court appeal is not consistent with the Supreme Court guidance.

(2) The Federal Appeals Court Federal Circuit did not address my request to support a Supreme Court requirement to appeal; and (3) The Federal Appeals Court Federal Circuit did not respond to my motion. This action also shows that the U.S. Appellate Court is holding the Supreme Court in contempt. The United States Federal Appeals Court Federal Circuit Court must defer to the United State Supreme Court for final appellate review. Since I acknowledged that I am requesting the signature compliant with the Supreme Court requirement, the appellate court's failure to provide the needed signature denies my 5th amendment right to due process.

BACKGROUND

Ellen Dunn is an African American female former employee of the Department of the Army. Ellen Dunn was terminated after filing as class agent in federal court in 1998 and an EEOC fact-finding hearing findings adverse to the Army in individual charges of sexual harassment and reprisal. Ellen Dunn filed a temporary injunction in the United States District Court in Norfolk, Virginia to block the termination action until the class complaint trial could be litigated. However, Federal Judge Friedman did not issue an injunction blocking the termination. Ms. Dunn sought to litigate the termination action through the Merit Systems Protection Board (MSPB), while the class action for systemic patterns of discrimination against the Department of the Army, Training and Doctrine Command, was litigated in the U.S. District Court of Norfolk, Virginia. They were separate and distinct issues litigated under two separate judicial jurisdictions.

A trial verdict was rendered in Ellen Dunn's favor, prior to a final ruling by the MSPB on termination, which found discrimination in a promotion and harassment in pre-termination acts. The federal court did not consider termination in its verdict as it was filed under separate and independent jurisdiction with the MSPB based on complaint issues in Pet. App. 12-a. Instead of the MSPB rendering a ruling in Ms. Dunn case involving Louis Napoleon and Colonel Smith based on the jury verdict, evidence, and testimony from the Dunn federal trial retaliations, the MSPB dismissed the case based on a settlement arrangement negotiated outside its jurisdiction and for which the remedies did not address injuries inflicted on Ellen Dunn resulting from the termination. Ellen Dunn had no immediate knowledge of its actions. After making several unsuccessful efforts to get access to documentation from the Justice Department and Department of the Army, Ellen Dunn received a document through a private attorney, (Pet. App. 44-a) indicating that the MSPB, Army, and Justice Department agreed

to dismiss the MSPB termination charges, without compensation for termination abuses. This letter was dated after a jury verdict, which found senior Army military officials and senior management officials of harassment and discrimination. Clearly the agency and the Justice Department acted in violation of Ellen Dunn's rights to due process because neither she nor her attorney provided written documentation in the dockets that waived her rights. Two judicial organizations that are separately jurisdictionally by statute are involved in processing the same MSPB issue simultaneously within a few days of a guilty jury verdict.

There is no indication in the court docket shown as Pet. App. 24-a, MSPB docket excerpt shown as Pet. App. 43-a or settlement agreement shown as Pet. App. 46-a, that the MSPB had any jurisdictional or legal authority over the federal district court case or that the Federal Appeals Court Federal Circuit has jurisdictional authority over Fourth Circuit Federal District Court settlement. There is no language in the district court's settlement agreement that indicates that it covers any issues, other than promotion discrimination and harassment against Ellen Dunn and promotion discrimination against Richard Reaves. The Appeals Court has failed to indicate under what statutory authority they refuse to sign the order, when the statutory authority for requesting the order was given More disturbing is the fact that the appeals court does not acknowledge the Supreme Court's right to final appeal.

There is no authority under the United States Code that allows for the global settlement of two separate and distinct set of allegations by the MSPB and the US District Courts as they are jurisdictionally separate. Further, the United States Court of Appeals does not have global jurisdiction to rule on a settlement agreement that is under the jurisdiction of the fourth Circuit. Therefore, it is important to have the judge's signature on this order to seek review by the Supreme Court, who is the only court that has jurisdiction to review this matter. The Supreme

Court does not give the federal appellate Clerks of the Court the authority to sign appellate rulings/order issued by judges for review by the Supreme Court.

Neither Ellen Dunn nor her attorney at that time filed a motion of dismissal or waiver of rights with the MSPB as stipulated in their own procedures. The US Code also does not give the MSPB global authority for any settlement issue outside the statutory provision of the complaint filed or under the United States district courts. The Federal Appeals court has assumed the authority of the fourth Circuit Appeals Court over the settlement in violation of the United States Code on jurisdiction. The Supreme Court is the entity that has global authority over this matter.

It in the settlement agreement, it is evident that only back pay was issued from the United States Treasury Judgment fund. The compensatory damage award authorized by the jury was apparently not issued from the Judgment fund. A payment for compensation of punitive conduct in the harassment and discrimination of Ellen Dunn was given from an unnamed account for waiver of accountability. Ellen Dunn seeks to determine if Federal agencies found guilty in jury verdicts can negotiate waivers of accountability with payment of non-reportable Federal tax dollars and whether the MSPB and appellate courts can endorse these agreements.

ARGUMENT AND AUTHORITIES

(A) An United States Court of Appeals has issued a unsigned ruling and has refused to issue a signed ruling to allow for lawful appeal to the Supreme Court. This calls for an exercise of this court's supervisory power.

(B) An United States Court of Appeals has failed to respond to a motion requesting the record is corrected to include her requests for signed judgments for Supreme Court Appeal and the courts denial of said request into the official court record to document that Ellen Dunn in accordance with Supreme Court and formal validation of the court's refusal to provide a signed judgment for Supreme Court appeal.

The questions presented to this Court are;

(1) Whether the United States Court of Appeals Federal Circuit erred when it failed to provide a copy of a signed opinion in respond to two requests by the plaintiff for a signed order/opinion from the court to support a Supreme Court appeal. The Appeals court knew or should have known that this Court would not review an unsigned unpublished opinion. The Court has publicly displayed on its official website that unsigned judgments/order opinions will not be reviewed with any comment. When I specifically requested my opinion to be signed by a Federal Appeals Court judge to fulfill a Supreme Court requirement, the court indicated that there was no authority and returned my unsigned unpublished opinion to me. Further, the court has not recorded in its official PACER record that requests were made.

(2) Whether the appellate court violated the Supreme Court appellate authority and authority to require signatures on opinions for review. Equal justice under the law is the ultimate

responsibility of the Supreme Court of the United States. As the final reviewer of the law, the Court ensures that United States citizens like me, the promise of equal justice under law. To that end the Supreme Court in this system derives its authority to review cases and issue opinions on cases that conflict with individual's constitutional rights.

This authority was issued under the function of judicial review and clarified in *Marbury v. Madison, 5 U.S. 137 (1803)* that asserts the Court's responsibility to overturn unconstitutional legislation. The Constitution restricts the Court to cases and controversies. However, *McCullock v. Maryland, 17 U.S. 316 (1819)* gives the court broad authority to execute its responsibility based on changing conditions. In this case, the Supreme Court has the authority to issue guidance to the appellate courts to sign opinions for review by the Court. Refusing to provide a signed opinion to comply with the Supreme Court's authority is a violation of Ellen Dunn's fifth amendment right to due process.

(3) Whether the Supreme Court can allow the United States Court of Appeals, Federal Circuit or any federal appeals court to refuse to sign a judgment or order from that court, when requested to comply with an individual's 5th amendment right to due process and desire to appeal to the Supreme Court.

The United States Court of Appeals Federal Circuit has violated my Fifth Amendment rights not to be deprived of life, liberty, or property without due process of law. The most basic right protected under the due process doctrine is the right to be given notice, and an opportunity to be heard. The Appellate Court's refusal to sign my opinion to support review by the Supreme Court violates that basic right. The Appellate Court has also refused to acknowledge that the Supreme Court has the authority to require a signed opinion/ruling for appellate review. Further, the appellate courts' practice of screening opinions and selectively signing unpublished opinions violates the equal

justice doctrine. There is a separate and unequal level of appellate review in the federal appeals courts. The principle of separate and unequal was addressed in *Brown v. Board of Education of Topeka, 347 U.S. 483(1954).* This case established the doctrine that separate institutions were inherently unequal. The Court decision in Brown v. Board of Education banned racially segregation in public schools. This landmark ruling started a long process of providing equal and non-discriminatory treatment in state and federal public institutions including federal courts under its due process provisions.

(3.) When the appellate court signs select opinions/rulings and refuses to sign opinions requested by African-Americans, it violates the doctrine of separate and unequal treatment that was struck down in *Brown v. Board of Education of Topeka, 347 U.S. 483(1954).* This doctrine ensures due process under the 5th amendment to the U.S. Constitution. Richard Oliver vs. Department of the Army, is a second case in the Federal Appeals Court Federal Circuit, Case Nos.04-3175 and 02-3039, under which the Appeals Court has refused to provide to African-American signed copies of opinions/judgment for direct appeal to the Supreme Court and writ review by the Supreme Court. Requested.

. By reviewing the Pet. App. 24-a (court docket) from June 11, 1999 to September 8, 1999 and comparing it with the Pet. App. 43-a (MSPB docket), the independent records show that MSPB sought to negotiate a settlement of federal district court charges and dismiss MSPB charges after a jury verdict finding Louis Napoleon and Michael Smith guilty, without a dismissal request or waiver on the MSPB docket filed by Ellen Dunn or her attorneys.

REASONS FOR GRANTING PETITION

While the Supreme Court has put guidance on the Supreme Court web site that it will not review unsigned opinions, we ask the Supreme Court to take the issue head on because of the impact it has on the general public and the perception that it brings that African-Americans cannot appeal rulings issued by the federal appeals courts. The primary question is why the federal appeals court is refusing to sign them when requested to do so for appellate review by the highest court.

Also at issue is whether the United States Court of Appeals Federal Circuit and the MSPB can establish global jurisdiction with the United State Federal Court of Appeals and its subordinate courts in settlement matters. That authority does not currently exist based

In the interest of justice, I request the Supreme Court grant the petition. Since the appellate courts issue unpublished signed opinions and a signed copy was formally requested for review by the Supreme Court, the plaintiff concludes that there are two reasons: the case was not properly reviewed by a panel of appellate judges or the panel of judges determined that they would exercise final appellate review. In either case, my constitutional rights were violated. The Supreme Court has the authority to require signatures on appeals that it reviews and issue guidance to the appellate courts to comply. The Federal Appeals court violated that guidance and asserted itself as the final level of review in violation of my constitution rights. More importantly federal appellate courts must not establish themselves as the final level of appellate review. There is no other remedy available to me by this court.

. On September 1, 2005 I filed a request to United States Federal Appeals Court Federal Circuit. The response received

stated " There is no authority requiring a judge's signature appear on an order. The disposition of your petition for a writ of mandamus was decided per curiam by a panel of judges". After determining from PACER that the court record did not record my request or refusal, I filed a motion. The court did not respond to my motion but the record was corrected to include the request for a signed opinion and their denial of my request.

The plaintiff also requests that the Supreme Court direct the Federal Appeals court sign the ruling because of the content of the ruling. While the MSPB official docket as Pet. Ann. 43-a lists that the Department of the Army and the Robinson Law Firm filed motions to close the record on May 10, 1999, there is no entry on the docket or included in the record to show that the MSPB ever issued an order closing the record or closed the record. Therefore, any communication by the Department of the Army, MSPB, and Robinson Law Firm about reopening the record is mute. The record was never closed. Further, the MSPB docket and record do not include any documentation from the Ellen Dunn or The Robinson Law Firm advising that they waived Ellen Dunn's interest in this matter.

While the Federal court docket as Pet. App. 24-shows that parties immediately after the verdict sought to assume jurisdiction of the MSPB issues under the federal court, there was no transfer of charges from the MSPB to the federal court. The respective dockets clearly show that both the Norfolk District Court and the MSPB were processing actions concerning MSPB discrimination issues at the same time and in violation of Ellen Dunn's fifth amendment right to due process.

The September 9, 1999 initial decision (Pet. App 51-a) from the MSPB states "Appellant filed an appeal concerning her removal by the agency, but subsequently withdrew the appeal with prejudice." That statement is false. The MSPB docket does not indicate that Ellen Dunn nor her attorney filed a withdrawal with the MSPB and the judge did not notify parties that he would be

using different procedures to process the dismissal. While the initial decision also states that the agreement was not approved was not reviewed and approved, the MSPB's docket (Pet. App. 43-a) and records dispute that fact. Finally, the withdrawal of the appeal by the Department of the Army is not lawful. The dismissal stipulates that "The withdrawal of the appeal, however, serves to remove the matter from the Board's jurisdiction". There is no documentation in the MSPB official docket that shows that Ellen Dunn or her attorneys filed a motion or other legal document with the Board to dismiss the complaint or waive her rights. The Department of Army did not have statutory authority to file a waiver on behalf of Ellen Dunn. The MSPB official docket shows by documentation and 5 U.S.C. §1201.55, that motion is the appropriate statutory basis on which to withdraw appeal.

Under 5 U.S.C. § 1202.12, Revocation, amendment, or waiver of rules, the Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond. The MSPB official docket and regulations clearly indicates that motion was the appropriate mechanism for the judge to permit for withdrawal of complaint. The withdrawal should have been filed by Ellen Dunn or her attorney with the MSPB. There also is no notice of waiver advising parties that the Judge is using a different procedures as required by 5 U.S.C. § 1202.12. Allowing the Department of Army to file an undated memorandum for a complainant, when Senior Army Officers and Management Official, were found guilty of harassment and discrimination by jury trial under pre-termination circumstances obstructs justice. This action impedes and obstructs the proper administration of the law under which the MSPB proceedings was being held.

On August 25, 1999 Ellen signed and acknowledges the 5th page of a settlement agreement provided by the Justice Department under the impression she still had rights to her MSPB claims. The MSPB Judge's involvement for over a month with the settlement agreement in a open case and without a waiver or legal authorization by the plaintiff or the plaintiff's attorney as documented in the MSPB's official docket reflect their intent to violate Ellen Dunn's 5th amendment right to due process. During the 16 days after Ms. Dunn signed and before George M. Kelly signed the agreement, the MSPB in violation of statute allowed the Department of the Army to file an undated waiver of my rights with the MSPB, which they accepted and dismissed the case. The MSPB is engaged in practices that penalize victims of sexual harassment and racial discrimination and reward violators, which is a violation of their mandate.

CONCLUSION

The plaintiff has shown in this petition that the United States Court of Appeals for the Federal Circuit has violated the plaintiff's rights under the 5th Amendment of the U.S. Constitution. The plaintiff is requesting the Court to exercise its supervisory powers to ensure that the plaintiff receives judicial process according to the United States Constitution. This writ will also ensure that the appellate court follows the rule of law and sign their opinion to support my request and respect the Supreme Court's right to final appellate jurisdiction. A written request was made to Judge Michel, based on the fact he is listed as the Chief Judge, requesting that the order be signed based on Ellen Dunn's desire to exercise her 5th Amendment right to due process and review of the appellate order by the Supreme Court. The response from the Appellate court refutes the Supreme Courts' final appeal authority and states "There is no authority requiring a judge's signature appear on an order. The disposition of your petition for a writ of mandamus was decided per curiam by a panel of judges. Therefore, your submissions are being returned without action."

The fact that the appellate court does not acknowledge the Supreme Court's authority or Supreme Court 2003 and 2004 guidance on unsigned opinions/rulings shows lack of respect for the authority held by the Supreme Court. A motion was also filed and not responded to by the appellate court. There is a time limit. The plaintiff has exhausted all remedies and is unable to obtain relief from any other source or other court. Directing the appellate court to sign, the ruling would enable me to lawfully appeal my court rulings without penalty since I followed the appropriate procedures. The content of the unsigned ruling indicates that the Federal Appeals Court Federal Circuit has the same jurisdictional authority that the Supreme Court holds. Requiring the appellate court to sign Ms. Dunn' ruling would place the Supreme Court as the final appellate

authority in this case. The unsigned ruling includes several issues of constitutional rights and global jurisdictional authority that should be addressed by the Supreme Court.

The issue of concern is that the United States Federal Court of Appeals Federal Circuit, in their responses to requests by African-Americans for signed opinions for 5th amendment appeal rights, do not recognize that this class of Americans have 5th amendment right to Supreme Court appeal. The Supreme Court should review why the United State Appellate Court is in direct defiance of Supreme Court authority.

The plaintiff respectfully prays that this court direct the appellate court to take the appropriate action and sign the order to allow me to lawfully appeal my ruling to the Supreme Court.

Respectfully submitted,

Ellen O. Dunn

Ellen O. Dunn

APPENDICES

Appendix A

NOTEA: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Court of Appeals for the Federal Circuit

MISCELLANEOUS DOCKET NO.796

IN RE ELLEN O. DUNN,
Petitioner,

ON PETITION FOR WRIT OF MANDAMUS

Before MICHEL, Chief Judge, NEWMAN and SCHALL, Circuit Judges.

PER CURIAM.

ORDER

Ellen O. Dunn petitions for a writ of mandamus to direct the Merit Systems Protection Board to, inter alia, reopen and award her additional remedies.

Dunn filed a lawsuit in the United States District Court for the eastern District of Virginia against the Department of the Army, alleging discrimination. Dunn also filed an appeal with the Merit Systems Protection Board concerning her later removal. After trial but before entry of judgment in the district court, the parties entered into a global settlement agreement that settled the district court action and the Board appeal. After notification from the parties, the Board dismissed the petition for review on September 9, 1999. Dunn was represented by counsel at those proceedings. Dunn did not seek review of the Board's dismissal order.

The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power. In re Calmar, Inc. 854 F .2d 461, 464 (Fed. Cir. 1988). A party seeking a writ bears the burden of proving that she has no other means of attaining the relief desire, Mallard v. U.S. Dist. Court for the Southern Dist. of Iowa, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is"clear and indisputable," Allied Chemical Corp. v. Daiflon, Inc. 449 U.S. 33, 35 (1980).

Dunn has not shown that her right to a writ is clear and indisputable. Having settled the case nearly six years ago, Dunn now seeks to reopen her cas: at the Board, alleging that she was pressured into set'lement, that there was a conspiracy or fraud resulting in the settlement, and that she could have received more relief than she obtained during settlement. Dunn has not demonstrated that she is entitled to mandamus relief.

Accordingly,

IT IS ORDERED THAT;

The petition for a writ of mandamus is denied.

FOR THE COURT

AUG 31 2005
Date

/S/Jan Horbaly
Jan Horbaly
Clerk

cc: Ellen O. Dunn
David M. Cohen, Esq.
Merit Systems Protection Board, Clerk

Filed
U.S. Court of Appeals for
The Federal Circuit'
August 31 2005 Jan Horbaly clerk

Appendix B

Supreme Court of the United States

2004 TERM COURT ORDERS

"The vast majority of cases filed in the Supreme Court are disposed of summarily by unsigned orders. Such an order will, for example, deny a petition for certiorari without comment. Regularly scheduled lists of orders are issued on each Monday that the Court sits, but "miscellaneous" orders may be issued in individual cases at any time. Scheduled order lists are posted on this Website on the day of their issuance, while miscellaneous orders are posted on the day of issuance or the next day."

8/3/05

http://www.supremecourtus.gov/orders/03ordersofthecourt.html

Appendix C

Supreme Court of the United States

2003 TERM COURT ORDERS

"The vast majority of cases filed in the Supreme Court are disposed of summarily by unsigned orders. Such an order will, for example, deny a petition for certiorari without comment. Regularly scheduled lists of orders are issued on each Monday that the Court sits, but "miscellaneous" orders may be issued in individual cases at any time. Scheduled order lists are posted on this Website on the day of their issuance, while miscellaneous orders are posted on the day of issuance or the next day."

8/3/05

http://www.supremecourtus.gov/orders/03ordersofthecourt.html

Appendix D

1323 Webster Street, N.E.
Washington, D.C. 20017
September 1, 2005

Court stamp filed 9/1/2004

Re: Miscellaneous docket 796

Chief Judge Michel
U.S. Court of Appeals for the Federal Circuit
The National Courts Building
717 Madison Place, NW
Washington, DC 20439

Dear Judge Michel:

This is in reference to the enclosed unsigned order issued by you denying my Petition for Writ of Mandamus on miscellaneous docket no. 796. I seek to appeal your order to the Supreme Court in accordance with my constitutional rights to due process.

The Supreme Court issued guidance to the subordinate courts that the preponderance of opinions are being returned without comment because they are unsigned by judges. I believe that the rulemaking power conferred on the Supreme Court by Congress in Title 28 United States Code § 2071 and 2072 gives the Supreme Court authority to direct susbordinate court to sign unpublished opinions, to enable parties to appeal rulings to the Supreme Court.

Therefore, I am returning the unsigned order to you and requesting the order be signed commensurate with my constitutional rights to due process and the rulemaking power of

the Supreme Court giving it authority to direct the appeals court to sign unpublished opinion for review by the Supreme Court. I respectfully request a signed opinion be forwarded to me, as soon as possible, so that I can proceed to the Supreme Court for review.

Enclosure

Respectfully

/s/ Ellen Dunn

cc:
David M. Cohn, Justice Department
MSPB

Appendix D(without attachements)

United States Court of Appeals
For the Federal Circuit
717 Madison Place, N.W.

Jan Horbaly 202-633-6550
Clerk of Court September 6, 2005 202-633-9623(F)

Elllen O. Dunn
1323 Webster Street, NE
Washington, DC 20017

RE: IN RE DUNN, 05M-796

Dear Ms. Dunn:

This is in response to your submissions received September 1, 2005, requesting a signed copy of the court order issued on August 31, 2005.

There is no authority requiring a judge's signature appear on an order. The disposition of your petition for a writ of mandamus was decided per curiam by a panel of judges.

Therefore, your submissions are being returned without action.

Very truly yours,

/s/ JanHorbaly (Initials)
Jan Horbaly
Clerk

JH/cs
Enclosures
Cc: David M. Cohen, Esq.
Merit Systems Protection Board, Clerk

Appendix E

Case Details
U.S. Court of Appeals for the Federal Circuit
IN RE DUNN
05-M796
Case documents are not available for download

Click Here for Listing of Briefs
Click Here To Search Again

Date	History
/ /	Appellant Principal Brief Filing Date
/ /	Appellee or Cross Appellant Principal Brief Filing Date
/ /	Appellant Reply Brief Filing Date
/ /	Cross Appellant Reply Brief Filing Date
/ /	Appendicies Filing Date
8/31/2005	Disposition: Denied: by Panel
/ /	Mandated on
>>	Please Note: The briefs above are only the most current.

>> Entries for Case Number: 05-M796<<

Entry 3: A 8/31/2005: CERTIFICATE OF INTEREST RECEIVED FROM PRO SE PETITIONER
Entry 1: A 7/29/2005: PETITIONER'S PETITION FOR WRIT OF MANDAMUS FILED
Entry 2: B 8/31/2005: ORDERED: PETITION DENIED BY: MOTIONS PANEL/ PER CURIAM. SERVICE : by mail on 7/27/2005

9/8/2005

APPENDIX F
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
Washington, DC

ELLEN O. DUNN,	)	
	)	
Plaintiff	)	
	)	
v.	)	Nos. 05-M796
	)	
	)	
DEPARTMENT OF THE ARMY,	)	
	)	
Defendant	)	
	)	

MOTION TO CORRECT RECORD AND FILE FOR SIGNED ORDER FOR APPEAL TO SUPREME COURT

Pursuant to Federal Rules of Appellate Procedures (FRAP) 7 and 11, appellant Ellen Dunn moves this to correct the record to show that a letter (Exhibit 1) was filed September 1, 2005 requesting a signed order to appeal to the Supreme Court and a letter was issued by the Clerk of the Court stipulating that "There is no authority requiring a judge's signature appeal on an order" (Exhibit 2). Neither document has been entered in the official Public Access Court Electronic Record (PACER) record (Exhibit 3) . Not recording these requests impact on my record for Supreme Court appeal and is inconsistent with the records that were properly updated in a similar situation for Richard Oliver (Exhibit 4). His requests for signed copies of his opinions were denied and properly recorded for appeal to the Supreme Court.

Since federal motions can be appealed and are responded to by judges, it is respectfully requested that my motion requesting a signed ruling for appeal to the Supreme Court and

correction of the official court record be responded to in a manner respectful of the Supreme Court's authority and FRAP.

While there may not be a requirement for a signed opinion be issued, there is a requirement that a signed opinion be provided, when the individual seeks a signed copy for appellate review by the Supreme Court. I am seeking a signed copy for that purpose. Title 28 United States Code 2071 and 2072 gives the Supreme Court authority to direct subordinate courts to sign opinions.

Exhibits (4)

/S/ Ellen O. Dunn
Ellen O. Dunn

CERTIFICATE OF SERVICE

The attached motion was sent on September 8 , 2005 in the following manner to the addresses listed below:

Addressee	Delivery Method
United States Court of Appeals for the Federal Circuit Attention: Clerk of the Court 717 Madison Place, N.W. Washington, D.C. 20439	Delivered by fax and mail, priority, signature verification USPS: 2303 3090 0000 0047 9891
Mr. David Cohen Department of Justice 1100 L Street, N.W. Washington, D.C. 20530	Priority mail, signature verification USPS:2303 3090 0000 0047 9907

Merit Systems Protection Board
mail, signature verification
Attention: Clerk of the Court
3090 0000 0047 9914
1615 M Street, N.W.
Washington, DC 20419

Priority

USPS: 2303

Date:_September 8, 2005_____

Name:/s/ Ellen Dunn

Appendix G
MERIT SYSTEM PROTECTION BOARD COMPLAINT
ISSUES FILED

27.Explain briefly why you think the agency was wrong in taking this action.

EXECUTIVE SUMMARY

The agency acted improperly by using the merit system for personnel performance to improperly reprise against Ms. Dunn, as described below. The agency over a three year period consistently violated all provision of 5 USC Section 4302, establishment of performance appraisal systems. The agency failed to comply with 5 USC 4302(b)(1), and violate 29 CFR 1614 to discourage her from pursuing a class action complaint. The agency obstructed justice in conducting investigations requested by Ms. Dunn, make false statement about union approval of personnel actions, and sought to interfere with the proper administration of government investigations.

Past Performance:

Ms. Dunn has consistently gotten outstanding performance appraisals from 1983 to 1994: for policy development, automation, and management studies. In her Performance Appraisal dated February/March 1994, it states "Ellen also served as the ODCSDOC representative on the ODCST Training Development (TQM) task force. The goal of the task force was to consolidate and reformat multiple training development regulations as a better management tool for the field. She revised two doctrinal regulations to meet the consolidation policy, TRADOC Regulation 25-31 and TRADOC Regulation 25-32." Both Colonel Smith and Mr. Napoleon talk about revising TRADOC Reg 25-36. TR Reg 25-36 has not been published. It is a number that has been assigned

to the draft revision by Colonel Smith. TRADOC Regulation 25-31 and TRADOC Regulation 25-32 are the existing regulations. The final approval draft that I prepared in FY94 has been redrafted multiple times as a TR 25-36 as a subterfuge to allege poor performance. The regulation was approved as final in FY94. The change from outstanding performance on the revision to the doctrine regulation and policy from (1983 to 1994) to poor performance(1998) from subsequent revisions to the same regulation coincides with Ms. Dunn's inquiry into non-merit and discrimination violations to Federal statutes. I was never given performance appraisals in FY96 or FY97 under Mr. Napoleon's oversight. TRADOC has been requested to investigate Mr. Napoleon and other concerning violations to Federal statutes.

Ms. Dunn successfully completed a final draft of the regulations, as endorsed by Colonel Frederick Berry and by General Morris J. Boyd. Ms. Dunn expressed concern in her performance appraisal about my professional development. In army correspondence presented at the OIC government hearing, Ms. Dunn was designated a "whistle blower" and " trouble maker". Ms. Dunn was also designated a good worker. The Office of the Deputy Chief of Staff for Resource Management under TRADOC, also provided assistance in successful performance. Ms. Dunn received an outstanding performance appraisal.

Subsequently Ms. Dunn was transferred to Colonel Baldwin. He changed her job title and accountability, but her job duties remained primarily the same. She non-concurred because he failed to align responsibilities for work projects with accountability. He advised that Civilian Personnel and EEO had endorsed his actions.

Performance Standards:

After receiving recognition for my work under Colonel Berry, Colonel
Baldwin advised me to revise the approved document and provided Ms. Dunn no guidance on the required changes. Colonel Robert Baldwin and LTC Giles Cutler were two successive supervisors after Colonel Berry. Both Colonel Baldwin and LTC Cutler, violated merit system principals by: failing to give her objective revised performance standards, failing to give Ms. Dunn quarterly reviews, failing to give Dunn written or other documented guidance on content of work projects, failing to provide Dunn documented feedback on projects completed, generating a hostile work environment for Ms. Dunn, failing to provide Ms. Dunn annual performance appraisals; and generating negative unofficial performance reviews after the fact. However, she successfully completed another draft under the supervision of LTC James Harrison, who worked for Colonel Baldwin.

After being transferred to Colonel Smith, the same pattern of supervision continued. Colonel Smith failed to develop within 30 days as prescribed and requested by Ms. Dunn. This fact is documented by Colonel Smith's sworn testimony during the OIC hearing. After Colonel Smith, unsuccessfully tried to establish a personal relationship with Ms. Dunn, he developed his own standards without considering input from Ms. Dunn and developed standards that do not provide objective performance measurement for the content of the regulation, for which he gave Ms. Dunn a negative rating. He maintained an extremely hostile work environment in which Ms. Dunn was constantly abused. After submitting the regulation, he negatively evaluated her on content standards that were not included in my performance standards and failed to give Ms. Dun an opportunity to respond.

Recommending Official:

Colonel Smith has been charged with sexual harassment and reprisal. During the OIC government investigation, General

Buckley provided sworn testimony to the effect that Colonel Smith's conduct in having closed door, one-on-one sessions with Ms. Dunn was inappropriate. General Buckley took no action to investigate Colonel Smith's conduct based on what he heard during the hearing. Colonel Smith gave Ms. Dunn the proposed termination letter within a few days after the OIC investigation. Both General Buckley and the TRADOC Chief of Staff provided correspondence indicating they would support the OIC government process. Yet the agency took no action to stop Colonel Smith's actions or investigate Colonel Smith.

Approving Official:

The agency should have disqualified Mr. Napoleon from being the deciding official. Mr. Napoleon has been charged with using non-merit and discriminatory practices in placing Ellen Dunn on the surplus (reduction list) on two different occasions (F 92 and FY 93) in a class action. He selected Ms. Dunn rather another employee with similar duties using non-merit factors. Both employees had the same title for several years. The titles were changed approximately six months to one year, under local personnel procedures, prior to placement on surplus list with no change in job duties.

Mr. Napoleon also selected, another employee, over Ms. Dunn in a non-merit and discriminatory manner for a developmental assignment. Mr. Napoleon is also charged as a discriminating official concerning this action.

The SCLC formally asked TRADOC to investigate these and other charges in February 1996. While promising to complete and conduct an investigation and provide a report of findings to the SCLC, TRADOC has failed to provide any documentation to refute the charges.

Mr. Napoleon is also charged in a non-selection for promotion action. While Army has advised that the position

was downgraded and cancelled, their actions in processing the selection is not consistent with merit principles and treats Ms. Dunn differently from other candidates.

During the OIC government investigation of reprisal charges and non-selection charges against Mr. Napoleon, wrote in his official EEO interview statement that Ms. Dunn is a "Bigot". He restated that comment during the OIC government investigation and reaffirmed that he felt that Ms. Dunn is a "Bigot" to the judge during the hearing for motion for temporary restraining order and motion for preliminary injunction.

During the processing of the proposed termination, Mr. Napoleon is responsible for the alteration or destruction of computer hard drive, e-mails, disks, and paper files that she requested to review to respond to the proposed termination. Mr. Napoleon refused her access to my computer, disks, and paper files on two trips that Ms. Dunn made to Fort Monroe. He also refused to respond to Ms. Dun's request for a list of files, that she submitted to the TRADOC staff attorney.

ASSESSMENT OF DECISION ON PROPOSED REMOVAL DATED 9-15-98

Timing of Proposed Removal. Mr. Napoleon refuses to acknowledge that he is a charged discriminating official, as stated above. General Buckley and the TRADOC chief of staff provided written correspondence indicating that they supported the OCI investigation process. Performance was a key part of the OCI government investigation.

Bias of Deciding Official. The agency was requested and agreed to investigate three specific instances of bias and applications of non-merit principles in selection process for two surplus lists and a development assignment, for which Mr. Napoleon made the selection. While the SCLC constantly requested the status of the inquiry, TRADOC never provided

any feedback indicating that your actions were consistent with civil service merit guidelines. His constant reference to Ms. Dunn as a bigot in EEO counseling reports and court proceedings, without providing evidence of any bigoted action, makes Mr. Napoleon bias and the agency negligent.

General Buckley, Mr. Napoleon's commanding officer, provided written correspondence to Ms. Dunn with false statement about the union president, in an effort to clear Mr. Napoleon and Colonel Smith of wrongful conduct, and not hold them accountable for violating merit principles for personal management.

Lack of Support during the PIP. The hostile work environment and Colonel Smith's character were the subject of an IG investigation requested by Ms. Dunn. However, the agency obstructed justice by removing evidence of wrong doing during the investigation and failing to provide Ms. Dunn feedback on the results of the investigation.

The purpose of the OCI investigation, which the agency agreed to and later violated, was to determine whether the environment is hostile. Mr. Napoleon's failure to move Ms. Dunn, while moving another female employee who reported, abuse problems with Colonel Smith is an indication of Mr. Napoleon's bias. He constantly supported the hostile environment in which she worked. Mr. Napoleon also failed to identify e-mails that Ms. Dunn submitted to Colonel Smith requesting assistance and guidance, and reporting problems with violations to the union contract.

Nature of PIP Objectives. There is nothing in Colonel Smith/Mr. Napoleon performance standards, task lists or PIP, or other tasking documents that states what the content of the regulation is suppose to include. The performance standards and PIP are not consistent with merit based standards as Colonel Smith evaluated Ms. Dunn on criteria that was not in

the performance standards or other documentation. In addition, in his PIP he specifically prohibited Ms. Dunn from coordinating her work with the Deputy Chief of Staff for Resource Management (ODCSRM). ODCSRM is responsible for ensuring army policy is statutorily and fiscally sound and cost effective.

3. Mr. Napoleon's analysis was biased in witness selection and improperly

reviewed the OCI transcript. In addition, Mr. Napoleon endorsed procedures that only gave Ms. Dunn access to specific files that Colonel Smith wanted to use. The intent of the review is to allow the employee to review and access any and all of their official office files to present documentation to refute the charges. Mr. Napoleon obstructed justice by allowing Ms. Dunn's computer hard drive, computer e-mails, computer disks, and paper files. The agency failed to conduct a proper investigation of the incident. The agency investigated action officers that worked within the office. However, only a few people had access to Ms. Dunn's computer, e-mails files, disks, and her paper files.

The agency arranged for Ms. Dunn to come on Fort Monroe on two occasions, but subsequently refused her access to any of her records. Ms. Dunn was escorted by Ms. Dudley at all times. Ms. Dunn also requested for a list of her was also denied.

4. The performance standards and PIP failed to identify the content

requirements for the regulation changes. During the hearing Colonel Smith provided sworn testimony that the content questions that Ms. Dunn raised were without merit and stated that General Hartzog had directed that certain programs (doctrinal digitization should be mandated and implement at once) Colonel Smith did not provide Ms. Dunn guidance to that

affect, include it in her standards, or include this content review in his assessment of her draft document.

His technical and organization comments are editorial in nature. He did not define editorial requirements as other male officers with similar responsibility. They are afforded the service of the full time editors that we have on staff. Colonel Smith's criticism of the manpower review is not appropriate since he would not allow Ms. Dunn to seek technical assistance on manpower staffing policy from ODCRM. Neither Ms. Nealon nor Ms. Gregory has any technical experience or career program certification that qualifies them to establish manpower policy.

A review of the actual e-mail notes will show that Ms. Dunn was not discourteous or confrontational. In addition, Ms. Wilson conversation with the agency attorney, Mr. Napoleon, and testimony during the court injunction hearing validate that Ms. Wilson did not have a problem with Ms. Dunn or the notes. Ms. Dunn had sought another staff officer to help her with the conference and resolved all issues, when Colonel Smith told her stop. Ms. Wilson's sworn testimony from the hear indicated that Colonel Smith not Ms. Dunn was confrontational.

Ms. Dunn provided Colonel Smith a copy of the line-in line-out draft variation that he wanted. She did not provide it through LTC. Goodwin. She wanted to be treated like other staff officers. She completed the project and submitted to her rater as other male officers did.

Instead of conducting one-on-one interviews with several staff officers,
Ms. Dunn conducted a group interview session in which the information was secured. She chose the group session because it was more time efficient, cost effective, and productive. In addition, she had been excluded from work project meetings and this gave her an opportunity to work with others in her office.

Ms. Dunn advised Colonel Smith of her action and he advised that she had failed the standard.

Ms. Dunn was directed to collect informal undocumented comments from Ms. Gregory and Ms. Nealon. Ms. Dunn has the right and responsibility to document and have accountability for information provided by others since she is accountable for the content. Ms. Dunn on behalf of her office provides doctrine input to other regulations for other TRADOC staffs. She documents and holds herself accountable for the content. The other TRADOC staffs expect staff officers to document and hold themselves accountable for input into a policy document. She formally requested on two occasions input for the regulations properly documented from Ms. Nealon and Ms. Gregory. They both failed to provide the input.

The aforementioned statements and his continuing comments stating that Ms. Dunn is a "Bigot" disqualify Mr. Napoleon from making a decision about Ms. Dunn termination objectively and making a decision based on merit.

Investigations:

The agency obstructed the investigation of Colonel Smith personal and professional conduct requested by Ms. Dunn by removing key evidence during the IG investigative process and failing to provide her formal feedback on the results of the investigation.

29. What action would you like the Board to take on this case(i.e., What remedy are asking for)?

Reinstatement to position as doctrine analyst, reimbursement of all salary, leave, attorney's fees, reimburse for additional costs for insurance coverage, and other expense associated with

termination. Appropriate disciplinary action against agency and Mr. Napoleon because this action was endorsed by agency.

30(b) If so, what are the errors?

1. The agency failed to have conflict of interest procedures to prohibit supervisors with vested interest from recommending or deciding on terminations.

2. The agency failed to take action when violations to merits systems personnel actions occurred.

3. The agency has no accountability provisions for patterns of violations by supervisors.

4. There is no oversight over abuses to personnel practices under merit systems.

30. c) Explain how you were harmed by the errors(s).

After getting my Master's Degree in Business Management in FY 1992, attending executive development in FY89, receiving outstanding ratings for management analyst functions (including policy development) for two different ratings, and getting outstanding performance appraisals from 1983 to 1994, my career has been ruined. From FY 1995 to FY 1998 I have been subjected to a consistent pattern of merit based personnel system violations by three successive supervisors with the endorsement and full knowledge of senior Army command leaders and their staff. This action has been taken because I am a class agent in an employment discrimination complaint against TRADOC, and the civic organization that have supported, the Southern Christian Leadership Conference(SCLC) has successfully raised these issues to the office of the Secretary of the Army. The Secretary of the Army has failed to provide any explanation for the disparate impact against minorities in downsizing and promotions.

31.C. How was it violated?

The agency endorses a personnel system, with disparate patterns of job classification and grade based on race and not on merit, a performance system which is subjective, a performance system that has no EEO oversight accountability, and a performance systems that fails to institute accountability for violations while giving supervisor the maximum flexibility in making personnel decisions as prescribed under the National Performance Review guidelines.

32.a) If you believe you were discriminated against by the agency, in correnction with the matter appealed, because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.

I believe that the agency actions are directly related to my activity as a class agent and actions that I have supported for the Southern Christian Leadership Conference (SCLC) . After February 14, 1996 Reverend Harris, the Virginia State Delegate of the Southern Christian Leadership Conference (SCLC) filed a formal EEO Class complaint on behalf of Ellen Dunn and other minority members, charging that Training and Doctrine Command engaged in discriminatory personnel practices.

For six months prior to the SCLC complaint the SCLC had tried unsuccessfully to hold a meeting with TRADOC leaders to discuss the EEO program in accordance with 29 CFR 1614 and subsequently personally deliver documentation to TRADOC military leaders to conduct a military investigation of discriminatory practices against Dunn and other minority employees.

TRADOC recommended that the SCLC also initiate a

formal EEO complaint on behalf of the employees, while the Army continued their informal investigation. The SCLC subsequently terminated its formal complaint after TRADOC agreed to participate in meetings and investigate the charges presented on behalf of Dunn and other black employees.

TRADOC failed to provide feedback to the SCLC on Discriminatory employment practices from fiscal years 1991-1995. After several months Ellen Dunn and other minority members filed a class action and charged that from 1991 to 1995 TRADOC Army leaders systemically discriminated against black employees.

In September/October 1996 the SCLC , along with representatives from the office of the congress and senate, met with the Office of the Secretary of the Army to discuss Dunn and other minority employees issues on systemic discriminatory employment practices. Reverend Harris presented documentation concerning discrimination in personnel practices for fiscal years 1991-1995. Reverend Harris failed to receive feedback from the Office of the Secretary of the Army that addressed or disputed charges of discriminatory employment practices at Fort Monroe from fiscal years 1991-1996.

APPENDIX H

Web PACER (v2.4)

U.S. District Court
Eastern District of Virginia (Norfolk)
CIVIL DOCKET FOR CASE #: 98-CV-1072
Dunn, et al v. Caldera
Filed: 09/17/98
Assigned to: Judge Jerome B. Friedman
Jury demand: Plaintiff
Demand: $0,000
Nature of Suit: 442
Lead Docket: None
Jurisdiction: Federal Question
Dkt # in Alexandria transfer : is 1:98-cv-00975
Cause: 42:2000 Job Discrimination (Race)

ELLEN DUNN
plaintiff

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RICHARD REAVES
plaintiff

Nicholas H. Hantzes
(See above)

[COR LD NTC]

Kenneth M. Robinson
(See above)
[NTC]

ARNEDA POWELL
plaintiff
[term 04/16/99]

Nicholas H. Hantzes
[term 04/16/99]
(See above)
[COR LD NTC]

Kenneth M. Robinson
[term 04/16/99]
(See above)
[NTC]

v.

LOUIS CALDERA, Secretary of the Army
defendant

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DOCKET PROCEEDINGS

DATE # DOCKET ENTRY
7/8/98 1 COMPLAINT Filing Fee $ 150.00 Receipt # 100 - 122357; jury demand (pete) [Entry date 07/14/98]
7/8/98 -- SUMMONS(ES) (orig. & 1) issued and given to attorney for service as to AUSA; (2) issued and given to attorney for service as to Attorney General and Department of the Army (pete) [Entry date 07/14/98]
9/4/98 2 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn for Temporary Restraining Order (mcke)
9/4/98 3 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction (mcke)
9/4/98 4 MEMORANDUM by Ellen Dunn, Richard Reaves, Arneda Powell in support of [2-1] motion for Temporary Restraining Order ,3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction (mcke)
9/4/98 5 AMENDED COMPLAINT by Ellen Dunn, Richard Reaves, Arneda Powell amending [1-1] complaint ;; jury demand (atty notified about service on amended complaint_ (mcke)
9/4/98 -- Jury Trial Flag (mcke)
9/8/98 6 MEMORANDUM by Ellen Dunn, Richard Reaves, Arneda Powell in support of [2-1] motion for Temporary Restraining Order (mcke)
9/8/98 7 NOTICE of Hearing: Motion Hearing set for

10:00 9/25/98 for [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction (mcke)
9/8/98 -- SUMMONS(ES) (org. & 3) issued & given to atty for service by mail on Robert M. Walker, U.S. Atty., U.S. Atty. General (mcke)
9/10/98 8 STATEMENT concerning venue filed by defendant Robert M. Walker (mcke)
9/10/98 9 FURTHER supplemental MEMORANDUM by Ellen Dunn, Richard Reaves, Arneda Powell in support of [2-1] motion for Temporary Restraining Order (mcke)
9/10/98 10 OPPOSITION by Ellen Dunn, Richard Reaves, Arneda Powell to transfer venue to Norfolk Division (mcke)
9/10/98 11 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn for Leave to File Second Amended Complaint for declaratory, Injunctive, and monetary relief for discrimination in employment and retaliation (to allege in #4 additional basis for venue in Alexandria Division under 28:1391(b); proposed amended complaint attached) (mcke) [Edit date 06/10/99]
9/10/98 12 SUMMONS Returned Executed 9/8/98 on amended complaint as to U.S. Atty (mcke)
9/11/98 13 Response by Robert M. Walker to [10-1] opposition by Arneda Powell, Richard Reaves, Ellen Dunn to transfer venue to Norfolk Division (mcke) [Entry date 09/14/98]
9/11/98 14 Response by Robert M. Walker to pltfs' further supplemental memorandum relating to motion for temporary restraining order (mcke) [Entry date 09/14/98]
9/15/98 17 Response by Robert M. Walker to pltf's misrepresentation (sent to LMB) (mcke) [Entry date 09/16/98]
9/15/98 18 MEMORANDUM OPINION - FILED (signed by Judge Leonie M. Brinkema) Copies Mailed: yes (psho) [Entry date 09/16/98]
9/15/98 19 ORDERED, for reasons stated in the accompanying memorandum opinion, that this Civil Action be transferred to the Norfolk Division of the United States District Court for the Eastern District of Virginia. (ent. & filed) (signed by Judge Leonie M. Brinkema) Copies Mailed: yes (psho)

[Entry date 09/16/98]
9/16/98 15 Response by Ellen Dunn, Richard Reaves, Arneda Powell to deft's response to pltfs' opposition to transfer venue to Norfolk division (sent to LMB) (mcke)
9/16/98 16 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn to Stay any ruling relating to venue, by Arneda Powell, Richard Reaves, Ellen Dunn for Renewed motion for Temporary Restraining Order (sent to LMB) (mcke)
9/16/98 20 ORDER denying [16-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Stay any ruling relating to venue, this Motion to Stay is Moot because the Court has already Ordered that this civil action be transferred to the Norfolk Division of the United States District Court for the Eastern District of Virginia; the Renewed Motion for Temporary Restraining Order must be renoticed by counsel for hearing in the Norfolk Division. (ent. & filed) (signed by Judge Leonie M. Brinkema) Copies Mailed: yes (psho)
9/16/98 -- Transferred case to Norfolk Division of the United States District Court for the Eastern District of Virginia via Fed Ex. Package consisting of certified copy of transfer letter, transfer Order, docket entries and case file in it's entirety. (psho)
9/17/98 -- Original file, certified copy of transfer order and docket sheet (#19) received from Alexandria Division (1:98cv975) (mwin)
10/5/98 -- Deadline updated; set Answer deadline to 11/9/98 for Robert M. Walker (mwin) [Entry date 10/06/98]
10/16/98 -- Motion hearing re: [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction set at 10:00
11/23/98 (mwin) [Entry date 10/19/98]
11/2/98 21 ORDER, agreed, filing amended class action complaint HERETOFORE FILED WITH ALEXANDRIA DIVISION OF THIS DISTRICT ON 9/4/98; granting defendant 30 days from date of entry of this order to file responsive pleading (reset Answer deadline to 12/2/98 for Robert

M.Walker); dismissing [2-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Temporary Restraining Order and [16-2] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Renewed motion for Temporary Restraining without prejudice, upon representation of parties that they have obviated need for pursuit of this remedy at this time; enter 10/30/98; filed 11/2/98 Order (signed by Judge Jerome B. Friedman) Copies Mailed: 11/2/98 (mwin) [Edit date 06/10/99]

11/4/98 22 MEMORANDUM by Robert M. Walker in opposition to [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction, received (mwin) [Entry date 11/06/98]

11/17/98 23 REPLY by Ellen Dunn, Richard Reaves, Arneda Powell to response to [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction, received (mwin) [Entry date 11/18/98]

11/17/98 23 AFFIDAVIT of Curtis Harris, submitted by Ellen Dunn, Richard Reaves, Arneda Powell in support of and attached to [23-1] response reply by Arneda Powell, Richard Reaves, Ellen Dunn (mwin) [Entry date 11/18/98]

11/20/98 24 ANSWER by Louis Caldera, Secretary of the Army, to [second] amended complaint (substitution for Robert M. Walker, Acting Secretary of the Army pursuant to FRCVP 25(d)(1) noted in answer) (SECOND amended complaint not filed) (mwin) [Edit date 06/10/99]

11/20/98 25 DECLARATION of Louis J. Napoleon, submitted by Louis Caldera in support of [22-1] opposition memorandum by Robert M. Walker (mwin) [Edit date 11/20/98]

11/20/98 26 DECLARATION of Robert Baldwin, submitted by Louis Caldera in support of [22-1] opposition memorandum by Robert M. Walker (mwin)

11/20/98 27 DECLARATION of Giles Cutler, submitted by Louis Caldera in support of [22-1] opposition memorandum by Robert M. Walker (mwin)

11/20/98 28 DECLARATION of Michael Smith, submitted by Louis Caldera in support of [22-1] opposition memorandum by Robert M. Walker (mwin)

11/20/98 29 DECLARATION of Rosanne M. Goodwill, submitted by Louis Caldera in support of [22-1] opposition memorandum by Robert M. Walker (mwin) 11/23/98 -- Motion hearing re: [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction re-set for 2:00 on 11/23/98 (mwin)
11/23/98 -- Motion hearing held re: [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction by Arneda Powell, Richard Reaves, Ellen Dunn (brus) [Entry date 11/24/98]
11/23/98 30 Minute entry: HEARING PROCEEDINGS: JBF, judge. Horace Weiss, ct. rep. (w/Zahn). Counsel appeared. Matter came on for hearing on motion for preliminary injunction. Opening statements. Evidence presented. Court recognized witnesses. Court adjourned until tomorrow at 9:00 a.m. (brus) [Entry date 11/24/98]
11/24/98 31 Minute entry: HEARING PROCEEDINGS: JBF, judge. Horace Weiss, rep. (w/Zahn). Continuation of motion for preliminary injunction hearing. Counsel appeared. Evidence presented. Closing arguments. Court ruled from the bench and DENIED motion and will prepare order pursuant to rulings made. (brus)
11/24/98 -- Motion hearing held (continuation) re: [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction (mwin) [Entry date 12/14/98]
11/24/98 -- Deadline updated; denying [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction (mwin) [Entry date 12/14/98]
12/1/98 32 TRANSCRIPT of Testimony of Kenneth R. Gaines and Richard O. Wightman, Jr. 11/23/98 before Judge Jerome B. Friedman (mwin) [Entry date 12/02/98]
12/10/98 33 ORDER and OPINION denying [3-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn for Preliminary Injunction for reasons set forth in opinion and stated on record at close of hearing; entered 12/9/98; filed 12/10/98 (signed by Judge Jerome B. Friedman) Copies Mailed: 12/10/98 (mwin) [Entry date 12/14/98]

12/14/98 -- Referred for Initial Pretrial Conference scheduling (mwin)
12/16/98 -- Initial pretrial conference set at 3:30 1/7/99 (mwin) [Entry date 12/21/98]
1/6/99 -- Initial pretrial conference set at 3:15 1/14/99 (mwin) [Entry date 01/13/99]
1/14/99 -- Initial pretrial conference held (rlam) [Entry date 01/29/99]
1/14/99 -- Deadline updated; setting Motion (to certify as classaction) Filing deadline to 2/16/99 (rlam) [Entry date 01/29/99]
1/18/99 34 Order on Initial Pretrial Conference setting Jury Trial at 10:00 a.m. on 5/24/99; Proposed voir dire and written jury instructions shall be received by the Clerk on or before May 19, 1999; Final Pretrial conference for 10:30 a.m. on 5/14/99; all de bene esse depositions shall be concluded on or before April 23, 1999; plaintiff shall complete discovery on or before March 9, 1999 and defendant on or before April 9, 1999; plaintiff's contemplatled motion to sever shall be filed with supporting memorandum, on or before January 27, 1999; defendant's brief in opposition by February 8, 1999, with any reply by February 12, 1999; if no hearing requested by February 18, 1999, the clerk shall refer filed on February 22, 1999; plaintiff's contemplated motion to certify as class action shall be filed, with memorandum on or before February 16, 1999, defendant's brief in opposition by February 26, 1999, with any reply by March 8, 1999; if no hearing is arranged by March 10, 1999, the clerk shall refer file on March 12, 1999, entered January 14, 1999 and filed January 18, 1999 (signed by Magistrate Judge Tommy E. Miller) Copies mailed 1/19/99 (rlam) [Entry date 01/29/99]
2/5/99 35 MEMORANDUM by Louis Caldera in opposition to plaintiff's motion to sever, received (NOTE: Motion to sever not filed yet) (mwin) [Entry date 02/09/99]
2/12/99 36 MOTION by Louis Caldera to Compel plaintiff's response to discovery (mwin) [Entry date 02/13/99]
2/12/99 37 MEMORANDUM by Louis Caldera in support of

[36-1] motion by Louis Caldera to Compel plaintiff's response to discovery, received (mwin) [Entry date 02/13/99]
2/12/99 38 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials (Note: Opposition brief was received 2/5/99.) (mwin) [Entry date 02/13/99]
2/12/99 39 MEMORANDUM by Ellen Dunn, Richard Reaves, Arneda Powell in support of [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials, received (mwin) [Entry date 02/13/99]
2/22/99 40 REPLY by Ellen Dunn, Richard Reaves, Arneda Powell to response to [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials, received (mwin)
2/22/99 41 MOTION by Arneda Powell, Richard Reaves, Ellen Dunn to Extend Time to file reply beyond deadline (mwin)
2/22/99 42 MOTION with Memorandum in Support by Arneda Powell, Richard Reaves, Ellen Dunn to Certify Class (mwin)
2/22/99 -- Motion hearing re: [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials set at 2:00 3/18/99 (mwin)
2/25/99 43 ORDER, agreed, Amending [34-1] initial pretrial order to extend defendant's motion response deadline; directing defendant to file response to [42-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Certify Class by 3/12/99; no other dates, times or deadlines in initial pretrial order are affected or changed by this order; Entered and filed 2/25/99 (signed by Magistrate Judge Tommy E. Miller) Copies Mailed: 2/25/99 (mwin) [Entry date 02/26/99] [Edit date 06/10/99]
3/9/99 44 NOTICE of hearing 3/18/99 on plaintiffs' motion to sever by Louis Caldera (mwin) [Entry date 03/10/99]
3/12/99 45 MEMORANDUM by Louis Caldera in opposition to [42-1] motion by Arneda Powell, Richard Reaves, Ellen

Dunn to Certify Class, received (mwin)
3/12/99 45 DECLARATION of Barry Buchanan, submitted by Louis Caldera in support of and attached to [45-1] opposition memorandum (mwin)
3/15/99 -- Motion hearing re: [42-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Certify Class set at 11:00 4/6/99, [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials set at 11:00 4/6/99, [36-1] motion by Louis Caldera to Compel plaintiff's response to discovery set at 11:00 4/6/99 (mwin)
3/30/99 46 STIPULATED PROTECTIVE ORDER outlining procedures for designation, access, protection of confidential material, including filing of sealed material with clerk in sealed envelopes or other sealed containers indicating title of action, description of contents, "under seal" designation, and statement as set forth in order (See order for specifics); entered 3/29/99; filed 3/30/99 (signed by Judge Jerome B. Friedman) Copies to counsel 3/30/99 (mwin)
3/30/99 -- **Set Protective Order Flag. (mwin)
3/30/99 47 TRANSCRIPT of Testimony of Ellen Dunn Nov. 23 & 24, 1998, before Judge Jerome B. Friedman (mwin)
4/6/99 -- Motion hearing held re: [42-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Certify Class by Arneda Powell, Richard Reaves, Ellen Dunn, [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials by Arneda Powell, Richard Reaves, Ellen Dunn, [36-1] motion by Louis Caldera to Compel plaintiff's response to discovery by Louis Caldera (bpea)
4/6/99 48 Minute entry: COURT PROCEEDINGS: JBF, j. Sue Ash, OCR. Counsel appeared. Matter came on for hearing on pending motions: Motion to certify class, argued - court DENIED and will prepare order pursuant to ruling made. Motion to sever, argued - court DENIED and will prepare order. Motion to compel, argued - court GRANTED and pltf. Arneda Powell is now DISMISSED, court will prepare order. Pltf.

Allowed to depose up to 5 people no later than April 26, 1999 and to furnish the names to deft. counsel by noon tomorrow April 7, 1999. (bpea)
4/14/99 49 ORDER pursuant to a conference call directing that plaintiff provide its expert report and opinion to the defendants no later than 4/23/99; instructing the parties to schedule any deposition of the plaintiff's expert as soon thereafter as is practical; directing that the defendant provide plaintiff with their expert report and opinion, if any, no later than 5/19/99; instructing the parties to schedule a deposition, if necessary, of the defendant's expert at their convenience; entered and filed 4/14/99 (signed by Judge Jerome B. Friedman) Copies Mailed: 4/14/99 (tarm)
4/16/99 50 Supplemental REPLY by Ellen Dunn, Richard Reaves, Arneda Powell to defendant's response to [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever Count III from Counts I and II for separate trials; received as directed 4/16/99 (originally submitted to clerk 4/2/99 in violation of Local Rules; leave of court required) (mwin) [Entry date 04/19/99]
4/16/99 51 ORDER denying [38-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Sever; denying [42-1] motion by Arneda Powell, Richard Reaves, Ellen Dunn to Certify Class; granting [36-1] motion by Louis Caldera to Compel and Dismissing defendant Arneda Powell pursuant to Rule 37(d); entered and filed 4/16/99 (signed by Judge Jerome B. Friedman) Copies Mailed: 4/16/99. ob (mwin) [Entry date 04/19/99]
4/16/99 52 MOTION by Louis Caldera for Summary Judgment (mwin) [Entry date 04/19/99]
4/16/99 53 MEMORANDUM by Louis Caldera in support of [52-1] motion by Louis Caldera for Summary Judgment, received (mwin) [Entry date 04/19/99]
4/16/99 53 DECLARATION of Louis J. Napoleon, submitted by Louis Caldera in support of [52-1] motion by Louis Caldera for Summary Judgment, attached to [53-1]

support memorandum by Louis Caldera (mwin) [Entry date 04/19/99] /16/99 53 DECLARATION of Cynthia P. Morrison, submitted by Louis Caldera in support of [52-1] motion by Louis Caldera for Summary Judgment, attached to [53-1] support memorandum (mwin) [Entry date 04/19/99]
4/16/99 53 DECLARATION of Wallace D. Plummer, submitted by Louis Caldera in support of [52-1] motion by Louis Caldera for Summary Judgment, attached to [53-1] support memorandum (mwin) [Entry date 04/19/99]
4/28/99 54 TRANSCRIPT of testimony of witnesses 11/24/98 before Judge Jerome B. Friedman (mwin) [Entry date 05/05/99]
5/3/99 -- Motion hearing re: [52-1] motion by Louis Caldera for Summary Judgment set at 9:30 5/13/99 (mwin)
5/4/99 55 MEMORANDUM by Richard Reaves in opposition to [52-1] motion by Louis Caldera for Summary Judgment, received (mwin) [Entry date 05/05/99]
5/4/99 56 MEMORANDUM by Ellen Dunn in opposition to [52-1] motion by Louis Caldera for Summary Judgment, received (mwin) [Entry date 05/05/99]
5/10/99 57 REPLY by Louis Caldera to response to [52-1] motion by Louis Caldera for Summary Judgment, received (mwin) [Entry date 05/11/99]
5/13/99 -- Motion hearing held re: [52-1] motion by Louis Caldera for Summary Judgment by Louis Caldera (bpea)
5/13/99 58 Minute entry: COURT PROCEEDINGS: JBF, j. Sue Ash, OCR. Counsel appeared. Matter came on for hearing on motion for summary judgment. Argued. Evidence presented. Court takes under advisement. (bpea)
5/14/99 -- Final Pre-Trial Conference rescheduled for 10:00, 5/18/99 (mwin)
5/18/99 -- Final Pre-Trial Conference held (mwin) [Entry date 05/19/99]
5/18/99 59 FINAL PRETRIAL ORDER entered in presence of counsel 5/18/99; filed 5/18/99 (signed by Magistrate Judge William T. Prince) (mwin) [Entry date 05/19/99]
5/19/99 60 ORDER deferring ruling on legal issues submitted by defendant in its motion for summary judgment

until later date, if at all; i.e., if issues are renewed at appropriate motion during or at conclusion of evidence presented at trial; entered and filed 4/19/99 (signed by Judge Jerome B. Friedman) Copies faxed to counsel by chambers 5/19/99 (mwin)
5/24/99 61 OBJECTION by plaintiff Ellen Dunn, plaintiff Richard Reaves to defendant's proposed jury instructions (mwin)
5/24/99 -- Jury Trial held (bpea) [Entry date 05/25/99]
5/24/99 62 Minute entry: JURY TRIAL PROCEEDINGS: JBF, j. Sue Ash, OCR. Counsel appeared. Matter came on for trial by jury. Plaintiff's motion for leave to issue subpoena to a General Buckley, filed in open court. Jury appeared as summoned and sworn to try the issue. Jurors not selected were excused subject to call. Court directed show cause order to absent jurors. Arguments heard on pltfs. Batson motion - court DENIED. Opening statements. Witnesses excluded. Pltf. presented evidence. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea) [Entry date 05/25/99]
5/24/99 -- ORAL MOTION in open court: Batson motion by Richard Reaves, Ellen Dunn (mwin) [Entry date 05/25/99]
5/24/99 -- Deadline updated; denying [0-0] oral Batson motion by Richard Reaves, Ellen Dunn (mwin) [Entry date 05/25/99]
5/24/99 63 MOTION by Richard Reaves, Ellen Dunn for leave to issue subpoena to General Buckley; filed in open court (bpea) [Entry date 05/25/99] [Edit date 05/26/99]
5/25/99 -- Jury Trial held (bpea) [Entry date 05/26/99]
5/25/99 64 Minute entry: CONTINUATION OF JURY TRIAL: JBF, judge. Sue Ash, OCR. Jurors, parties and counsel appeared. Pltf. presented evidence. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea) [Entry date 05/26/99]
5/26/99 -- Jury Trial held (bpea) [Entry date 05/27/99]
5/26/99 65 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Pltf. presented evidence. Jurors and parties excused until Friday, May 28, 1999, at 10:00 a.m. (bpea) [Entry date 05/27/99]

5/28/99 -- Jury Trial held (bpea) [Entry date 06/01/99]
5/28/99 66 Minute entry: COURT PROCEEDINGS: JBF, j. Barbara Ingle, ct. rep. w/Zahn. Jurors, counsel and parties appeared. Pltf. presented evidence. Motion for clarification of scope of triable issues filed in open court. Stipulation read to the jury. Jurors and parties excused until Tuesday, June 1, 1999, at 9:30 a.m. (bpea) [Entry date 06/01/99]
5/28/99 67 MOTION by Ellen Dunn for clarification of scope of triable issues filed in open court. (bpea) [Entry date 06/01/99]
6/1/99 -- Jury Trial held (bpea) [Entry date 06/02/99]
6/1/99 68 Minute entry: CONTINUATION OF JURY TRIAL: Jurors and parties appeared. Pltf. presented evidence. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea) [Entry date 06/02/99]
6/2/99 -- Jury Trial held (bpea) [Entry date 06/03/99]
6/2/99 69 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash,OCR. Jurors, counsel and parties appeared. Pltf. Presented evidence and rested. Arguments heard on defts. motion for judgment as a matter of law - court takes under advisement. Deft. renewed motion for summary judgment - court withheld ruling. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea) [Entry date 06/03/99]
6/2/99 -- ORAL MOTION in open court by Louis Caldera for Judgment as a Matter of Law (mwin) [Entry date 06/07/99]
6/2/99 -- ORAL MOTION in open court by Louis Caldera for Summary Judgment (mwin) [Entry date 06/07/99]
6/2/99 -- Deadline updated; [0-0] oral motion by Louis Caldera for Judgment as a Matter of Law under advisement (mwin) [Entry date 06/07/99]
6/3/99 -- Jury Trial held (bpea)
6/3/99 70 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Deft. Presented evidence. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea)
6/4/99 -- Jury Trial held (danc) [Entry date 06/07/99]
6/4/99 71 Minute entry: CONTINUATION OF JURY

TRIAL: JBF, j; Sue Ash, OCR. Jurors, counsel & parties appeared. Deft. pres. evidence. Jurors & parties excused until June 7, 1999, at 10:00 a.m. (danc) [Entry date 06/07/99]
6/7/99 -- Jury Trial held (bpea)
6/7/99 72 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Deft. Presented evidence. Jurors and parties excused until Wednesday, June 9, 1999, at 9:30 a.m. (bpea)
6/9/99 73 OBJECTION by plaintiff Ellen Dunn, plaintiff Richard Reaves to defendant's proposed jury instruction no. 29 (mwin)
6/9/99 74 Certificate of Service filed by plaintiff Ellen Dunn, plaintiff Richard Reaves for [73-1] objection by Richard Reaves, Ellen Dunn to plaintiff's proposed jury instruction No. 29 (mwin)
6/9/99 -- Jury Trial held (bpea) [Entry date 06/10/99]
6/9/99 75 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Deft. Presented evidence and rest. Pltf. presented rebuttal evidence and rest. Jurors excused until tomorrow at 10:30 a.m. Arguments heard on defts. motion for judgment as a matter of law and court made the following rulings: As to pltf. Dunn, sexual harrassment claim - GRANTED. As to pltfs', Count II claim (disparate impact) - GRANTED. As to pltf. Dunn, Count 1 claim (disparate treatment) and Count III claim (retaliation) - DENIED. As to pltf. Reaves, Count 1 claim (disparate treatment) - DENIED. Pltfs' motion to certify as a class action - DENIED. Counsel and parties excused until tomorrow at 10:30 a.m. (counsel to report at 9:30 a.m. to receive jury instructions). (bpea) [Entry date 06/10/99]
6/9/99 -- Deadline updated; granting in part, denying in part [0-0] oral motion by Louis Caldera for Judgment as a Matter of Law (mwin) [Entry date 06/15/99]
6/10/99 -- Jury Trial held (bpea) [Entry date 06/11/99]
6/10/99 76 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Instructions read to the jury. Final arguments heard.

Jury rec'd court's final instructions and retired to begin their deliberations. Jurors and parties excused until tomorrow at 9:30 a.m. (bpea) [Entry date 06/11/99]
6/11/99 -- Jury Trial held (bpea)
6/11/99 77 Minute entry: CONTINUATION OF JURY TRIAL: JBF, j. Sue Ash, OCR. Jurors, counsel and parties appeared. Jury retired to continue with their deliberations. Sometime later the jury returned with following verdict (see attached). Verdicts filed. Jurors excused subject to call. Court directed deft. to file any motions within 10 days. Court directed pltf. To file brief re equitable relief issues by June 28, 1999, deft. to respond by July 13, 1999, and any replies by July 20, 1999. Clerk directed not to enter judgment at this time. (bpea)
6/11/99 78 JURY VERDICT for Ellen Dunn as to Count 1, Disparate Treatment with damages fixed at 0, filed in open court. (bpea)
6/11/99 79 JURY VERDICT for Ellen Dunn as to Count III, Retaliation with damages fixed at $135,000.00, filed in open court. (bpea)
6/11/99 80 JURY VERDICT for Louis Caldera as to claims of pltf. Richard Reaves, filed in open court. (bpea)
6/21/99 81 MOTION by Louis Caldera for Judgment as a Matter of Law, or by Louis Caldera for remittitur (mwin) [Entry date 06/23/99]
6/21/99 82 MEMORANDUM by Louis Caldera in support of [81-1] motion by Louis Caldera for Judgment as a Matter of Law, [81-2] motion by Louis Caldera for remittitur, received (mwin) [Entry date 06/23/99]
6/28/99 83 Memorandum by Ellen Dunn in support of reinstatement and award of front pay and back pay, received (mwin)
7/12/99 84 MEMORANDUM by Louis Caldera in opposition to plaintiff Dunn's [83-1] brief in support of reinstatement and award of front pay and back pay, received (mwin)
7/13/99 85 ORDER, agreed, Extending Time for plaintiff to

file opposition, Response to Motion reset to 7/13/99 for [81-1] motion by Louis Caldera for Judgment as Matter of Law, [81-2] for remittitur; entered and filed 7/13/99 (signed by Judge Jerome B. Friedman) Copies Mailed: 7/13/99 (mwin)
7/23/99 86 MEMORANDUM by Ellen Dunn in opposition to [81-1] motion by Louis Caldera for Judgment as a Matter of Law, [81-2] motion by Louis Caldera for remittitur, received subject to defect (due 7/13/99 per submitted agreed order; no copy to local counsel) (mwin) [Edit date 07/23/99]
7/30/99 87 REPLY by Louis Caldera to response to [81-1] motion by Louis Caldera for Judgment as a Matter of Law, [81-2] motion by Louis Caldera for remittitur, received (mwin)
9/13/99 88 TRANSCRIPT of Trial Testimony of Ellen Dunn 6/1/99 before Judge Jerome B. Friedman and a Jury; PART 1 (mwin) [Entry date 09/15/99] [Edit date 09/15/99]
9/13/99 89 TRANSCRIPT of Trial Testimony of Ellen Dunn 6/2/99 before Judge Jerome B. Friedman and a Jury; PART 2 (mwin) [Entry date 09/15/99] [Edit date 09/15/99]
10/13/99 -- Letter received from AUSA George Kelley w/proposed order (mwin) [Entry date 10/14/99]
10/15/99 90 ORDER Dismissing this case, claim and cause of action agreed with prejudice; retaining jurisdiction to enforce stipulation for compromise settlement; entered and filed 10/15/99 (signed by Judge Jerome B. Friedman) Copies Mailed: 10/18/99. ob [EOD Date: 10/18/99] (mwin) [Entry date 10/18/99]
10/15/99 -- CASE assigned to Judge Jerome B. Friedman (mwin) [Entry date 10/18/99]
10/15/99 -- Case closed (mwin) [Entry date 10/18/99]
10/18/99 -- Permanent Record (mwin)
10/28/99 -- **Remove Jury Flag** (mwin)
8/30/01 91 TRANSCRIPT of testimony of Barry Buchanan 5/25/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
8/30/01 92 TRANSCRIPT of testimony of Louis Napoleon 5/26/99 before Judge Jerome B. Friedman and jury (mwin)

[Entry date 09/04/01]
8/30/01 93 TRANSCRIPT of testimony of Larry McDaniels 6/1/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
8/30/01 94 TRANSCRIPT of testimony of Barry Buchanan 6/7/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
8/30/01 95 TRANSCRIPT of testimony of Alice Ward 6/7/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
8/30/01 96 TRANSCRIPT of testimony of Michael Goodwin 6/9/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
9/19/01 97 TRANSCRIPT: Excerpt of Proceedings 5/28/99 before Judge Jerome B. Friedman and a Jury (mwin)
10/11/01 98 TRANSCRIPT: Trial testimony of George P. Perry 6/9/99 before Judge Jerome B. Friedman and a jury (mwin) Case Flags:
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END OF DOCKET: 2:98cv1072
PACER Service Center
Transaction Receipt
02/02/2004 21:21:11
PACER Login:
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Client Code:
Description:
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2:98cv01072
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[RECENT EVENTS FROM THE DOCKET REPORT FOR CASE: 2:98cv01072]

10/15/99 -- CASE assigned to Judge Jerome B. Friedman (mwin) [Entry date 10/18/99]
10/15/99 -- Case closed (mwin) [Entry date 10/18/99]
10/18/99 -- Permanent Record (mwin)
10/28/99 -- **Remove Jury Flag** (mwin)
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8/30/01 95 TRANSCRIPT of testimony of Alice Ward 6/7/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
8/30/01 96 TRANSCRIPT of testimony of Michael Goodwin 6/9/99 before Judge Jerome B. Friedman and jury (mwin) [Entry date 09/04/01]
9/19/01 97 TRANSCRIPT: Excerpt of Proceedings 5/28/99 before Judge Jerome B. Friedman and a Jury (mwin)
10/11/01 98 TRANSCRIPT: Trial testimony of George P. Perry 6/9/99 before Judge Jerome B. Friedman and a jury (mwin)
[END OF DOCKET: 2:98cv1072]

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APPENDIX I

MERIT SYSTEMS PROTECTION BOARD
INDEX (EXCERPT)
ELLEN O. DUNN V. DEPARTMENT OF THE ARMY
Docket No. DC-0432-99-0174-I-1

Volume 3

TAB	DOCUMENT DESCRIPTION	DATE OF RECEIPT OR ISSUANCE
29	MSPB Order	April 13, 1999
30	Appellant Correspondence	April 20, 1999
31	MSPB Order	April 21, 1999
32	Agency Motion to Close the Record	May 10, 1999
33	Appellant Opposition to Agency Motion	May 10, 1999
34	Appellant Transmission of E-mails	May 17, 1999
35	Appellant Motion to Reopen	June 14, 1999
36	Agency Motion to Continue	June 28, 1999
37	MSPB Order	June 29, 1999
38	Appellant Motion Re: Settlement	July 12, 1999
39	Agency Response to Appellant Motion to Reopen	July 22, 1999
40	MSPB Order Re: Reopening	August 5, 1999
41	Appellant Notice Re: Jurisdiction	August 9, 1999
42	Appellant Notice of Settlement	August12, 1999
43	Confirmation of Settlement	August 12, 1999
44	Agency Notice Re: Settlement	August 13, 1999
45	Appellant Request for Delay	August 19, 1999
46	Agency Request for Delay	September 1, 1999
47	Agency Submission Re: App.	September 8, 1999
48	Initial Decision	September 9, 1999

APPENDIX J

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON, VA 22803-1837

August 17, 1999

Litigation Division
Civilian Personnel Branch

Subject: Dunn et al. v. Caldera, Civil Action No. 2:98cv 1072
Kenneth M. Robinson
The Robinson Law Firm
717 D Street, N.W. Suite 400
Washington, Dc 20004

Dear Mr. Robinson:

This letter responds to your letter dated August 16, 1999. While I appreciate your enthusiasm, I again reiterate that this case will not be settled, and we will not have an agreement until all parties have signed a settlement agreement. In order to move us further in that direction I am attaching a Draft Stipulation for Compromise Settlement (Draft Stipulations). The U.S. Attorney's Office is still reviewing this draft so I expect some changes. Please review this draft and call me at (703) 696-1601.

I would also like to point out some of the areas in the Draft Stipulation that are not in agreement with your letter dated August 16, 1999. George Kelly of the U.S. Attorney's Office indicated that there is a prohibition against setting dates for the receipt of settlement checks, and charging the government interest if these dates are not met. The Department of Justice and the Army have no control over when the Judgment Fund issues checks. The best we can do is pass on the Judgment Fund's estimate for processing the check.

In addition, a sum of less than $475,000 will be paid as indicated in the Draft Stipulation. Likewise, the Army makes no guarantees concerning the eligibility or timing of plaintiff's retirement. The agreement also settles no only all pending administrative or judicial cases of plaintiffs, but any case that has accrued and could have been brought by plaintiffs up to the date of signing the agreement.

Finally, TRADOC sent a letter to your friend, Judge Clancy, requesting he not issue my decision until August 24, 1999. Finally, we request that along with this settlement, you sign a letter to Judge Clancy dismissing the MSPB appeal on the day you sign the Final Stipulation.

Very truly yours,
/s/ Edward J. Martin
Edward J. Martin
Litigation Attorney

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ELLEN DUNN, RICHARD REAVES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	2:98cv1072
LOUIS CALDERA	)	
Secretary of the Army,	)	
	)	
Defendant.	)	

STIPULATION FOR COMPROMISE SETTLEMENT

Plaintiffs, Ellen Dunn, and Richard Reaves, and Defendants, Louis Caldera, Secretary of the Army, hereby stipulate and agree as follows:

The parties hereby agree to settle and compromise the above-entitled action upon the terms and conditions stated herein;

1. One current federal employee, Richard Reaves, and a former federal employee, Ellen Dunn brought this action, alleging discrimination, and seeking compensatory damages, attorney's fees, and other relief. All parties in this action, without admitting any wrongdoing or discrimination, wish to avoid the uncertainty, expense and delay of additional litigation and so are willing to settle the above-referenced case and all claims between the parties regarding alleged discrimination or other wrongdoing.

2. The parties agree to enter into a Stipulation for Dismissal, prepared in accordance with Fed R Civ P. 41 (a)(1),

to be filed with the Court, requesting that the above-captioned sit be dismissed, it its entirety, with prejudice. The Stipulation for Compromise Settlement ("Settlement Agreement") itself will not be filed with the Court.

The Settlement Agreement is specifically conditioned upon the Court's dismissal of this suit, in its entirety, with prejudice. In the event that either party breaches the Settlement Agreement, the other party may seek appropriate judicial relief to enforce the Settlement Agreement.

3. Plaintiff agrees to accept and Defendant agrees to provide, in accordance with the terms and conditions set forth below the following:

a. Defendant shall pay to Plaintiffs and their attorneys the sum of $470,719.08 as settlement of all monetary issues, including, but not limited to, back pay, compensatory damages, attorneys fees, and costs. Defendant makes no representation to Plaintiffs or Plaintiffs' attorneys concerning the tax consequences of these moneys. Furthermore, the parties agree that any tax obligation shall be the obligation of Defendant or any component of the United States, should the taxing authority make any such determination.

b. Defendant shall retroactively promote Plaintiff Dunn to GS-13, step 6, from November 7, 1997 to the date she was terminated, November 24, 1998.

c. The judgment fund shall issue a check to the Department of the Army in the sum $4280.92. These moneys will be utilized for back pay for Plaintiff Dunn's retroactive promotion to GS-13, step 6, from November 7, 1997, to the date she was terminated, November 24, 1998. Plaintiff Dunn will receive $4219.73, gross, in back pay for this period, prior to payment of taxes, withholdings, and deductions required by law. The remainder of the $4280.92, $61.19, will cover the mandatory employer contribution for Medicare.

d. Plaintiffs and Defendants agree that beyond that which is provided for in paragraph 3(a), each side will bear their own attorney's fees and costs. Plaintiffs and Defendant agree not to petition for attorneys' fees and costs as prevailing

party or otherwise. Plaintiffs, Plaintiffs attorneys, and Defendant agree that the payment of moneys referred to herein are not to be used in any way to set or compute attorneys fees, or any attorneys' fee rate, in any other administrative or judicial action involving Plaintiffs, Plaintiffs' attorney, or the Defendant except as between Plaintiffs and their attorneys.

e. Plaintiffs state that they have no indebtedness to the United States, including but not limited to the Department of the Army.

4. In consideration for these terms, Ellen Dunn agrees not to apply for or accept employment from any Military Service of the Department of Defense or Department of Defense related agency.

5. The payments set forth in the Settlement Agreement shall be in full settlement and satisfaction of any and all claims and demands of whatever nature the Plaintiffs have, whether known or unknown, against the Defendant and any of their former or present agencies, instrumentalities, officers, employees, agents and servants, in either their official or individual capacities, as a result of Plaintiffs employment with Defendant and /or, without limitation, on account of the incidents or circumstances giving rise to the above entitled actions.

6. Plaintiffs hereby agree to accept the aforesaid in full settlement and satisfaction of any and all claims and demands of what ever nature that Plaintiff or Plaintiffs' heirs, executors, administrators, or assign, jointly and severally, has, whether known or unknown, against the Defendant and any of their former or present agencies, instrumentalities, officers employers, agents, and/or servants, in either their official or individual capacities, on account of their employment with the Defendant, the incidents or circumstances giving rise to the above-entitled action and/or any and all claims of discrimination or other claims which could have been asserted by Plaintiffs with respect to Plaintiffs' employment with Defendant.

7. The payment of the above-stated sums shall constitute a complete release and bar of any and all causes of

action, claims, liens, rights or subrogated interest, known or unknown to Plaintiffs, by reason of, or arising from the events, circumstances, or incidents giving rise to this lawsuit. The parties acknowledge that this Settlement Agreement fully and completely resolves all disputes and claims between them, whether known or unknown, administrative or judicial, accruing on or before the date of this document. This includes, but is not limited to any Title VII, Rehabilitation Act or Age Discrimination in Employment Act claims. Plaintiffs agree to indemnity and hold harmless the United States of America and any component thereof, including the Defendant, from any and all claims and liens by any other party on the settlement amount proceeds arising from the Settlement Agreement.

8. The Settlement Agreement shall not constitute an admission of liability or fault on the part of the Defendant or on the part of any of its agents, instrumentalities, officers, employee's agents, or servants.

9. The Plaintiffs represent that they have thoroughly read and reviewed this Settlement Agreement with the assistance of Plaintiffs' counsel, and have had a reasonable period of time to consider the settlement agreement, and voluntarily accept and agree to all of its provisions. Specifically without limitation, although plaintiffs have not claimed age discrimination, plaintiffs affirmatively represent that they waive any such claims for past acts of discrimination by defendant, and they have considered 29 U.S.C. 626(f) and assert that all requirements for said waiver have been met. This Settlement Agreement fully sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings, oral, or written, between the parties.

10. The parties agree that any breach of the provisions of this Settlement Agreement does not entitle either party to reopen the underlying action. However, either party may pursue any appropriate judicial remedies that may be available to them to seek enforcement of the terms of this Settlement Agreement.

11. Once the Court orders a final dismissal of this action with prejudice, Defendant shall cause to be prepared and

tendered to Plaintiff's attorney listed below a check or draft made payable to Ellen Dunn and the Robinson Law firm, in the amount of $470,719.08. Defendant has no responsibility for subsequent endorsements. All amounts cited herein are for payment from the judgment fund. The estimated time for tender of the check is eight weeks from the date of dismissal by the Court.

12. Upon payment of the aforesaid sums and completion of all settlement terms, the attorneys for Plaintiff shall supply the attorney for Defendant with an executed Receipt and Satisfaction of Settlement on a form acceptable to Defendant. The Receipt and Satisfaction of Settlement shall not be filed with the Court.

DATED this 25 (10) day of August (September) 1999.
GMK

/s/ Kenneth M. Robinson
Kenneth M. Robinson, Esquire
The Robinson Law Firm
717 D Street, N.W. Suite 400
Washington, DC 20004

Attorney for Plaintiff

/s/ Ellen Dunn
Ellen Dunn
Plaintiff

/s/ Richard Reaves
Richard Reaves
Plaintiff

/s/George M. Kelly, III
George M. Kelly III, Esquire
Assistant United States Attorney
U.S. Department of Justice
8000 World Trade Center
101 West Main Street
Norfolk, Virginia 23510

Attorney for Defendant

APPENDIX L

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE

ELLEN O. DUNN	) DOCKET NUMBER
Appellant,	) DC-0432-99-0174-I
v.	)
DEPARTMENT OF THE ARMY,	)
Agency	) DATE: 9-9 1999

Kenneth M. Robinson, Esquire, and Nicholas Hantzes, Esquire, Robinson Law Firm, Washington, D.C., for the appellant.

Bradley R. Hansen, Esquire, Fort Monroe, Virginia, for the agency.

BEFORE
Joseph E. Clancy
Administration Judge

INITIAL DECISION

Appellant filed an appeal concerning her removal by the agency, but subsequently withdrew the appeal with prejudice. The record indicates that the parties reached a global settlement agreement in another matter. Said agreement was not submitted for review and approval in connection with this appeal, and the Board retains no jurisdiction for enforcement of the agreement. See Shaw v. Department of the Navy, 39 M.S.P.R. 586, 594 (1989), overruled in part on other grounds, Joyce v. Department of the Air Force, 74 M.S.P.R. 112 (1997). The withdrawal of the appeal, however, serves to remove the matter from the Board's jurisdiction. See Beasley v. Defense Logistics Agency, 38 M.S.P.R. 25, 27 (1988). It is therefore appropriate that the appeal be DISMISSED with prejudice.

DECISION

The appeal is DISMISSED.

FOR THE BOARD.

/S/JOSEPH E. CLANCY
Joseph E. Clancy
Adminstrative Judge